

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of ROBERT MEDLEY, PAIGE  
MEDLEY, and KAMERON MEDLEY, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBERT MEDLEY,

Respondent-Appellant.

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UNPUBLISHED  
February 26, 2008

No. 279584  
Wayne Circuit Court  
Family Division  
LC No. 07-463345

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

PER CURIAM.

Respondent Robert Medley appeals as of right from the trial court order terminating his parental rights to the minor children. We affirm.

**I. Basic Facts And Procedural History**

This case arose in January 2007, when petitioner obtained an order to place Robert, Paige, and Kameron in state custody pending a preliminary hearing and filed an original petition for permanent custody alleging sexual abuse.

At the time that the petition was filed, respondent was in the Wayne County jail on a \$40,000 bond awaiting his preliminary exam for three counts of first-degree criminal sexual conduct of a minor under thirteen (against his stepdaughter Faith). In December 2006, Faith told her mother, Monique Medley, that respondent had repeatedly forced her to have anal, oral, and vaginal intercourse with him in June 2006 while Monique Medley was away from home. Faith testified that she did not tell Monique Medley earlier of the assault because she was scared of respondent. Monique Medley called the police after Faith told her about the assault.

Nathan Whitehead Jr. (half-brother of Robert, Paige and Kameron) told petitioner that he saw respondent “slap Faith around and make her do stuff to his body part.” Kameron told petitioner that he knew he was being questioned by petitioner because his “sister got raped.” Kameron said he heard Faith say “stop” when respondent raped her but that respondent threatened to kill Faith if she told anyone.

Faith's certified medical records from Children's Hospital were admitted into evidence. These medical records indicated that Faith's examination was normal but did not rule out the possibility of anogenital sexual contact with respondent given her pubertal status.

In August 2004, there was a substantiated child abuse/neglect case through Kentucky's Cabinet for Families and Children due to respondent's physical abuse of Kameron. Respondent disciplined Kameron and left him with severe welts on his legs. In October 2004, the Kentucky court ordered the children returned to Monique Medley but ordered that respondent not have contact with the children. Nathan told petitioner that respondent used to punch him and throw him around. Paige told petitioner that respondent punched her in the jaw when they were living at their old house. Faith said respondent was the disciplinarian in the family. He used bad language and slapped the children to discipline them.

Faith testified that when he got angry with Monique Medley, respondent would call her profane names and holler at her. Faith testified said that respondent hit Monique Medley with an open hand more than one time. Faith said that respondent tried throwing a chair at Monique Medley. Monique Medley admitted that respondent hit her on one occasion and that he verbally abused and belittled her. In October 2004, after the children were conditionally returned to Monique Medley, respondent checked himself out of the hospital (he had been hospitalized for high blood sugar) and let himself into Monique Medley's home. He was angry that she had not visited him in the hospital and began throwing kitchen chairs at her. After that incident, Monique Medley obtained a personal protection order against respondent. Monique Medley said that respondent was physically abusive to her for the ten years of their relationship. Monique Medley testified that was afraid of respondent and wanted a divorce.

Respondent owed \$100,000 in child support for children in five different Friend of the Court cases. According to Monique Medley, respondent refused to get a job because he owed so much money in child support that they would have taken all his earnings so he did not see the "use" in working.

Respondent was convicted of manslaughter,<sup>1</sup> and possession of a firearm while attempting to commit a felony,<sup>2</sup> and sentenced on February 5, 2007 to four to fifteen years' imprisonment for the manslaughter conviction, plus two years' consecutive imprisonment for the felony-firearm conviction. His earliest release date is September 13, 2012.

Based on the aforementioned evidence, the trial court terminated respondent's parental rights and made the following verbal findings. Respondent had deserted his children for 91 or more days and has not sought custody.<sup>3</sup> Respondent had been convicted of manslaughter and

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<sup>1</sup> MCL 750.321.

<sup>2</sup> MCL 750.227b.

<sup>3</sup> MCL 712A.19b(3)(a)(ii) (parent has deserted the child for 91 or more days and has not sought custody of the child during that period).

will be incarcerated for a period of four to 15 years, depriving the children of a normal home life for a period exceeding two years.<sup>4</sup> The trial court also stated as follows:

(b)(I)<sup>[5]</sup> [sic] in that Mr. Medley's act, that being the sexual assault of Faith and the Court finds the child would suffer from injury or abuse in the foreseeable future if placed in the parent's home.

Also as to Mr. Medley, subsection (b)(ii),<sup>[6]</sup> Mr. Medley has an opportunity to prevent the physical, in this case physical injury that he physically abused all the children, sexual abuse of a child, I think this is a sibling, in Faith.

And there is a reasonable likelihood that the children will suffer injury or abuse in the foreseeable future if placed in the parent's home.

Petitioner's counsel sought clarification of these last findings, and the following exchange transpired:

*Petitioner's Counsel:* Your Honor, are you considering for father section (j) or (b)(3), (b)(iii)?

*The Court:* (b)(3).

*Petitioner's Counsel:* Yes. (b)(iii).

*The Court:* In that Faith is not the—

*Petitioner's Counsel:* He's not the legal father of Faith.

*The Court:* Right. I think I said he wasn't, but I said (b)(I). I meant to say (b)(iii).

*Petitioner's Counsel:* Thank you.

*The Court:* In that a non parent adult caused the physical injury or sexual abuse of the child and that's the sibling, that being Faith. So I must correct

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<sup>4</sup> MCL 712A.19b(3)(h) (parent is imprisoned for more than 2 years).

<sup>5</sup> MCL 712A.19b(3)(b)(i) (parent caused the physical injury or physical or sexual abuse of the child or a sibling of the child, and the child will likely suffer from injury or abuse if returned to the parent).

<sup>6</sup> MCL 712A.19b(3)(b)(ii) (parent could have prevented but failed to prevent injury or abuse the child or a sibling of the child, and the child will likely suffer injury or abuse if returned to the parent).

myself if I said (b)(ii). I meant to say (b)(iii)<sup>[7]</sup> because it was a non parent adult because he's not the biological father of Faith.

Upon petitioner's counsel's request for further clarification regarding factor (3)(j),<sup>8</sup> the trial court stated: "For Mr. Medley, I should have said, (b)(iii), (b)(ii), (h) and (j)." In a written order, the trial court stated the "the Court finds by clear and convincing evidence that the parental rights shall be terminated . . . as to father, Robert Medley, pursuant to MCL 712A.19(b)(3)(b)(ii) [sic]; \*b)(ii) [sic]; (h), (i),<sup>[9]</sup> (j) . . . ."

## II. Statutory Grounds For Termination

### A. Standard Of Review

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence.<sup>10</sup> We review for clear error a trial court's decision terminating parental rights.<sup>11</sup> A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.<sup>12</sup> Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.<sup>13</sup>

### B. The Trial Court's Findings

The trial court's written and oral findings are somewhat unclear and inconsistent. In its oral findings, the trial court stated that it was terminating respondent's parental rights pursuant to MCL 712A.19b(a)(ii). However, the trial court failed to mention this factor when later asked for clarification, and this factor was not included in the court's written order. Because courts speak through their written orders and not their oral decisions,<sup>14</sup> we will not consider this factor as a ground supporting the termination of respondent's parental rights.

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<sup>7</sup> MCL 712A.19b(3)(b)(iii) (nonparent caused the physical injury or physical or sexual abuse of the child or a sibling of the child, and the child will likely suffer injury or abuse if returned to the parent).

<sup>8</sup> MCL 712A.19b(3)(j) (based on parent's conduct, the child will likely be harmed if returned to the parent).

<sup>9</sup> MCL 712A.19b(3)(i) (prior termination of one or more siblings of the child due to serious and chronic neglect or physical or sexual abuse and rehabilitation attempts were unsuccessful).

<sup>10</sup> MCL 712A.19b(3); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999).

<sup>11</sup> MCR 3.977(J); *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *In re Sours*, *supra* at 633.

<sup>12</sup> *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

<sup>13</sup> MCR 2.613(c); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989).

<sup>14</sup> MCR 2.602(A); *Rinas v Mercer*, 259 Mich App 63, 71; 672 NW2d 542 (2003).

As stated, the trial court explained during its oral findings that it was terminating respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i) and (ii) but later clarified that it meant to say MCL 712A.19b(3)(b)(iii). However, when later asked for further clarification, the trial court stated that it was terminating pursuant to "(b)(iii), (b)(ii)" and in its written order it stated that it was terminating pursuant to "MCL 712A.19b(3)(b)(ii) and \*b(ii)[.]" Because the trial court's written order is unclear on which subsection or subsections of factor (3)(b) it was relying to terminate respondent's parental rights, we defer to the trial court's specific statement that it "meant to say (b)(iii) because it was a non parent adult because he's not the biological father of Faith."

In its written order, and only in its written order, the trial court stated that it was terminating respondent's parental rights pursuant to MCL 712A.19b(3)(i). Although, as stated, the court speaks through its written orders, the trial court did not make findings on the record regarding this factor, and, indeed, the record does not support a finding that respondent's rights to any other siblings of the children herein were previously terminated. Moreover, respondent does not raise MCL 712A.19b(3)(i) on appeal. Thus, we need not consider the validity of this factor as a ground supporting the termination of respondent's parental rights.

The trial court consistently stated that it was terminating respondent's parental rights pursuant to MCL 712A.19b(3)(h). And although the trial court did not initially mention MCL 712A.19b(3)(j), it later clarified that this factor supported termination of respondent's parental rights, and this factor was included in the court's written order. Accordingly, we will consider respondent's termination as having been granted pursuant to MCL 712A.19b(3)(b)(iii), (h), and (j).

### C. Analysis

#### (1) MCL 712A.19b(3)(b)(iii)

Faith, the half-sister of Robert, Paige, and Kameron, suffered physical and sexual abuse by respondent. The proofs established that respondent's sexual abuse of Faith was not a one-time event. Respondent sexually abused her on ten different occasions while the mother was away from home. Respondent also used bad language and slapped all of the children as a form of discipline. The evidence was sufficient to establish that respondent physically and sexually abused a sibling of the subject children and that the children would likely suffer injury or harm in the foreseeable future if placed in respondent's home. Therefore, there was clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(b)(iii).

Respondent's argument that the trial court erred by relying on Faith's testimony and not on the medical records is without merit. The medical records indicated that Faith's examination was normal but did not rule out the possibility of anogenital sexual contact with respondent. Faith's testimony was persuasive, convincing, and credible. Her reluctance to testify was reasonable given the sensitive, embarrassing, private subject of the testimony and her young age. Moreover, the medical examination occurred months after the sexual abuse had been perpetrated, possibly allowing her body time to heal from physical evidence of the assault.

(2) MCL 712A.19b(3)(h)

Respondent was convicted of manslaughter and possession of a firearm while attempting to commit a felony, and he was sentenced to four to 15 years' imprisonment for the manslaughter conviction and two years' consecutive imprisonment for the felony-firearm conviction. Respondent's lengthy incarceration and prison sentence will deprive Robert, Paige, and Kameron of a normal home life for a period exceeding two years. As a result of his incarceration, respondent cannot provide proper care and custody of his children. There is no reasonable expectation that respondent will be able to provide proper care and custody within a reasonable time considering the children's young ages. Therefore, there was clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(h).

(3) MCL 712A.19b(3)(j)

Robert, Paige, and Kameron would likely be harmed in respondent's care. On several occasions, respondent sexually abused Faith. He perpetrated the sexual assaults while Robert, Paige, and Kameron were in the home. Respondent was also physically and verbally abusive to Monique Medley, exposing them to domestic violence. Respondent has been physically abusive to all of the children since 2004, when Kentucky authorities first removed the children from his care. Respondent also punched Paige in the jaw to discipline her. The Kentucky court prohibited respondent from coming near the family, recognizing him as a danger to them. Respondent's criminal history and CPS record reveal that he is a dangerous and harmful man with a propensity towards violence and anger, and this would subject the children to risk of harm. Therefore, there was clear and convincing evidence to terminate under MCL 712A.19b(3)(j).

(4) Other Statutory Grounds

In his brief on appeal, respondent argues that the trial court erred in terminating his parental rights pursuant to MCL 712A.19b(3)(a)(ii) and (b)(i). As stated, we do not consider factor (a)(ii) because it was not included in the trial court's written order. Regardless, although respondent identifies factor (a)(ii) in his questions presented, he has failed to argue the merits of this allegation of error; thus, this issue is not properly presented for review.<sup>15</sup> With respect to factor (b)(i), we conclude that the evidence supporting termination under factor (b)(iii) would also support termination under factor (b)(i). Thus, to the extent that the trial court may have terminated respondent's rights under factor (b)(i), we would nevertheless affirm because this Court should not reverse the lower court when the court reaches the correct result albeit for the wrong reason.<sup>16</sup> Moreover, regardless of the trial court's findings on any of the subsection (b) factors, the trial court only needed to find that one of the statutory grounds was met by clear and

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<sup>15</sup> See *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993).

<sup>16</sup> *Tipton v William Beaumont Hosp*, 266 Mich App 27, 37-38; 697 NW2d 552 (2005).

convincing evidence to terminate respondent's parental rights.<sup>17</sup> As stated, there was clear and convincing evidence to terminate pursuant to MCL 712A.19b(3)(h) and (j).

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Alton T. Davis

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<sup>17</sup> MCL 712A.19b(3); *In re Sours, supra* at 632-633.